

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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: 06-MD-1775(JG) (VVP)
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IN RE: AIR CARGO SHIPPING : United States Courthouse
SERVICES ANTITRUST LITIGATION : Brooklyn, New York
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April 23, 2014
2:00 p.m.
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TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE VIKTOR V. POHORELSKY
UNITED STATES MAGISTRATE JUDGE

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* * *

(Time noted: 2:10 p.m.)

THE COURT: Please be seated.

Good afternoon.

LAW CLERK: Civil cause for status conference,
06-MD-1775, In Re: Air Cargo Shipping Service Antitrust
Litigation.

THE COURT: Good afternoon. I received the agenda.
It's a short agenda. Maybe it'll take a little bit longer, it
may take a little time to work it out. But in any event, I'll
follow that unless there is anything that somebody wants to
add to the agenda.

So the scheduling going forward, Plaintiffs will
want -- I think the principle issue is the plaintiffs want to
be able to deal with summary judgment motions now,

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1 notwithstanding the pending class motion. It does seem to me
2 that the defendant's argument that, you know, that this may
3 put the parties to unnecessary work, has at least some merit.

4 I don't have a sense of what kind of motions are
5 going to be made. So it's kind of hard to know how a decision
6 on the class certification motion, to the extent that it's
7 granted, might shape motions down the line. But it does seem
8 to me that it's going to have some impact on what motions
9 ultimately would be made.

10 MR. KAPLAN: Your Honor, Robert Kaplan. One thing
11 that wasn't in our papers, there is precedent in this
12 courthouse in the Interchange Antitrust Litigation In Re:
13 Payment Card Interchange Fee and Merchant Discount Antitrust
14 Litigation, which is MDL 1720 before Magistrate Judge James
15 Orenstein and Judge Gleeson.

16 THE COURT: Yes.

17 MR. KAPLAN: In that case, the class certification
18 motion is completely briefed and argued, and then there was a
19 schedule while that was pending for summary judgment and
20 Daubert motions. And then there was a separate motion, the
21 class motion was argued before Magistrate Judge Orenstein.
22 And then there was briefing on the summary judgment and
23 Daubert. And then there was a separate hearing while the
24 class motion was pending, the summary judgment before Judge
25 Gleeson. And then that afternoon, the Daubert before

1 Magistrate Judge Orenstein.

2 So there's precedent. I mean, it seems to us that
3 there are issues here like Defendants are going to say they
4 weren't members of a conspiracy. You know, there's no -- and
5 that can be briefed. They have certain affirmative defenses.
6 They're claiming filed rate. We're saying that doesn't apply.

7 THE COURT: I'm sorry?

8 MR. KAPLAN: Filed rate. We say that doesn't apply
9 outside the United States. They're claiming sovereign
10 immunity, they're claiming sovereign compulsion. Not all of
11 them, different ones claiming different things.

12 So it's our feeling there's no reason why that can't
13 be briefed. What they're talking about is waiting not only
14 for your report and recommendation, but then an objection,
15 appeals to Judge Gleeson, and then an 823(f) petition.
16 Meanwhile, we're sitting around.

17 These basic issues are not going to change after
18 class certification. You're still going to have to decide,
19 you know, Defendant X was a member of the conspiracy. We say
20 there are issues of facts and we have enough evidence on all
21 of them. They're going to say certain of the Asian carriers,
22 these rates were approved in --

23 THE COURT: I understand.

24 MR. KAPLAN: So that's our position, why not go
25 ahead and do as much of this as we can.

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1 THE COURT: I understand the notion that there are
2 things that could be taken care of now that are not directly
3 effected by the class certification decision.

4 I'll hear from the defendants.

5 MS. SINFELT: Good afternoon, Your Honor.

6 THE COURT: Your name?

7 MS. SINFELT: Meena Sinfelt, liaison counsel for the
8 defendant.

9 The issue that we have that we think is most
10 important right now is the motion, this would be a piecemeal
11 summary judgment. We'd have a partial summary judgment motion
12 on, as Your Honor said, issues that will probably not change.
13 But there are clearly issues for the defendants that may
14 change, particularly if the class is not certified. I mean,
15 that is obviously what we've been arguing for here, that we're
16 not part of a conspiracy, and that this class shouldn't be
17 certified.

18 So to push forward with piecemeal some of these
19 motions or partial motions doesn't really make any sense. It
20 doesn't really create unnecessary work at this time.

21 THE COURT: How? Are you saying that if class
22 certification is denied, that you think these motions will
23 never be made?

24 MS. SINFELT: Well, Your Honor, I think that they
25 wouldn't be made in this context or in this format. Who knows

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1 what form the class is going to take or if it would go under
2 individual litigations, or who knows who would still be left
3 in the litigation, the defendants that would be left in the
4 litigation at that point. And it certainly doesn't make any
5 sense to file those motions right now, at this time, when we
6 could be waiting, you know, six months. Who knows.

7 THE COURT: When, if not now?

8 MS. SINFELT: I think that is really the issue. The
9 defendants are not against moving forward with this case at
10 all. It's just the proper timing. We're not trying to stall
11 indefinitely, Your Honor.

12 THE COURT: My question is when? Would you say that
13 once class certification, a report and recommendation on class
14 certification is made, that that would be the time to then go
15 forward with motions, summary judgment practice.

16 MS. SINFELT: No, Your Honor. The defendants take
17 the position that we shouldn't be moving forward on summary
18 judgment motions until a final decision.

19 THE COURT: You mean after an appeal.

20 MS. SINFELT: After an appeal.

21 Also, Your Honor, because I'd like to point out that
22 we have some serious outstanding discovery issues that have
23 not been resolved, and are not close to being resolved, that
24 would absolutely affect any summary judgment motions.

25 THE COURT: Which ones are those?

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1 MS. SINFELT: I will speak generally on behalf of
2 this, and then I will defer to my colleagues to give you
3 specifics. So Air New Zealand filed contention interrogatory
4 in the middle of December, and we've received only objections
5 and no responses. We have been working with the plaintiffs
6 and we do expect to receive responses but not until the end of
7 May.

8 Even then, we're not sure what kind of responses
9 we'll be receiving. So there's always the potential that
10 we're going to have a motion to compel. And obviously we
11 would not want to move forward on -- we could not move forward
12 on summary judgment until having that vital information. And
13 I know that four of the other defendants are also waiting for
14 information.

15 And I'll, right now, defer to Asiana.

16 THE COURT: Other than contention interrogatories,
17 what aspects of discover remain open? Did you want to speak
18 to that or did you want Asiana to do that.

19 MS. SINFELT: I believe it is all interrogatories,
20 we have four to five outstanding interrogatories.

21 THE COURT: Are you talking about something that's
22 separate from the contention interrogatories.

23 MS. SINFELT: Yes, Your Honor. There are four other
24 defendants who have outstanding interrogatories. One
25 defendant with a document request. We also have three to four

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1 defendants, I believe, that have open 30(b)(6) depositions.
2 Those are now scheduled for a deadline at the end of May.
3 However, I'm not sure if that will be accomplished at that
4 point or if those parties will ask for a further extension.

5 THE COURT: And that's it. So we have some 30(b)(6)
6 depositions still open. At least one set of document requests
7 and various interrogatories.

8 MS. SINFELT: Yes, Your Honor. With respect to the
9 30(b)(6) depositions, the parties had all agreed to an
10 extension to the end of May because we thought most of these
11 issues could be worked out by declaration and so live
12 testimony would not be needed. However, we were just recently
13 informed that we now have a third party who is going to have a
14 live deposition because, obviously, a declaration was not
15 able --

16 THE COURT: You're talking about a nonparty?

17 MS. SINFELT: A nonparty.

18 THE COURT: Anybody else want to be heard from the
19 defendant's side?

20 MR. SIMMONS: Ian Simmons for Asiana.

21 One example of us not knowing whether to move for
22 summary judgment until there is a class cert decision, one
23 example could be we don't know if the Court will deny class
24 certification in its entirety or whether it will ex-U.S.
25 routes or deny it for inbound routes. Remember, the case is

1 about all routes into and out of the United States, every
2 point in the world into the U.S. for a six-month period.

3 We would be moving for summary judgment on the extra
4 territorial claims on a statute that we've agreed for inbound
5 commerce saying the Court doesn't have jurisdiction on it, but
6 that would not be necessary if the Court denied class cert for
7 inbound routes. We just don't know.

8 So there's a number of summary judgment theories
9 that will turn on the scope of the class cert decision. And
10 we put them in the letter that was presented to the Court.
11 The Second Circuit is pretty clear that summary judgment
12 should be decided once we know whether or not we're dealing
13 with the class. One of the reasons is summary judgment is not
14 binding on a class if it's ruled on prior to the certification
15 of that class. We think there should be a ruling on that.

16 So we think that's the efficient way to go. There
17 may not be motions to bring depending on what the ruling is.
18 My recommendation would be that the defendants put it in a
19 letter to be dealt with when the class cert decision comes
20 down. The parties can meet and confer, figure out where we go
21 from there. That's what I would ask of the Court.

22 I would say, you know, we are going to be sending --
23 for Asiana, we are sending for plaintiffs, we will be moving
24 to compel. We are at an impasse on very basic interrogatories
25 that they will not answer. Trying to rush, get a date for

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1 summary judgment when we don't have necessary information from
2 them, is not the proper way to proceed.

3 MR. WOLKOFF: Your Honor, Harvey Wolkoff on behalf
4 of Polar.

5 I would start fundamentally with the fact that there
6 are six named plaintiffs here, Your Honor. And Polar didn't
7 do business with five and a half of them. That is, five of
8 them not at all and one of them just outbound and not inbound.
9 If the class is not certified, that's a very different case
10 against Polar with regard to half of the plaintiffs. And
11 whether we would then file a motion for summary judgment at
12 all, I don't know. But we would have to decide based upon who
13 the plaintiffs are and what kind of business they did. And,
14 frankly, where they did the business with Polar.

15 Your Honor may recollect that Polar did plead
16 guilty, but to a very narrow conspiracy involving business
17 from the United States to Australia for a very limited time
18 period ending in April of 2003. It doesn't even begin to
19 suggest a global conspiracy with regard to every country for a
20 period of time as expansive as the plaintiffs are suggesting
21 here.

22 So it very much matters to what we do. And,
23 therefore, the time that we would consume on the part of the
24 Court, just with regard to who the parties would continue to
25 be, what the claims would continue to be, what kind of

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1 defenses we would have, it's an entirely different picture.

2 We would be spinning a lot of wheels, Your Honor.
3 Not only the parties but Your Honor would be as well. We
4 would be consuming a lot of court time if we went forward on
5 that basis. We have expert discovery to do.

6 And we have interrogatories, Your Honor. We would
7 not agree that they're contention interrogatories, but
8 whatever one would put a name to them, we were told by the
9 plaintiffs, we'll tell you what, we're going to answer those
10 interrogatories after fact discovery is closed and we know
11 more based upon the fact discovery they take.

12 These are outstanding interrogatories. They're
13 talking about getting ready for a trial, they haven't even
14 answered our basic interrogatories that we served back in
15 2010. We're still waiting for answers. We haven't finished
16 fact discovery, as has been suggested. As soon as we do, we
17 want answers to our interrogatories. We're going to move to
18 compel them.

19 It's premature to do what the plaintiffs are
20 suggesting. This is a complex trial we have before Your Honor
21 on class certification. That's going to tell us a lot about
22 how this case will proceed. So We would submit that we should
23 wait patiently for Your Honor to decide it and then make
24 decisions accordingly.

25 MR. BROOKHISER: Bob Brookhiser on behalf of Nippon

1 Cargo Air.

2 In addition to the outstanding discovery and the
3 possibility of issues changing and second summary judgment
4 motions, I think there's also -- it may not be a, quote, due
5 process issue, but it's the reason why in virtually every case
6 the class certification decision has to precede the summary
7 judgment motion. Because if we prevail on the summary
8 judgment motion and the class is certified, we get no benefit
9 from the summary judgment because people will opt out.

10 THE COURT: I understand that.

11 MR. BROOKHISER: And that's why the normal order is
12 to resolve certification, see what kind of case there is, then
13 have summary judgment.

14 MR. MURRAY: Chris Murray for Air India.

15 Similar to Polar, I don't think there's any
16 indication that any of the 16 plaintiffs ever did business
17 with our client. So if class certifications is denied, I'm
18 not sure there's any kind of claim that gets asserted here.

19 THE COURT: Well, by the present plaintiffs anyway.

20 MR. MURRAY: By the present plaintiffs.

21 In addition, likewise, with the other defendants we
22 served interrogatories about two and a half years ago. We got
23 objections that they were contentious interrogatories, and
24 said that we'll answer them when factual discovery is
25 completed. We have not gotten an answer.

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1 MR. TOMPKINS: George Tomkins for Air China.

2 We're in a similar position as Air India. Although
3 we served interrogatories which plaintiffs characterized as
4 contention interrogatories, back in 2010 we had a couple of
5 meet and confers. The result was when fact discovery is over,
6 they'll answer them. To date, we have no answers.

7 THE COURT: All right. Mr. Kaplan?

8 MR. KAPLAN: What you just heard, Judge, is a lot of
9 fluff. Mr. Sedran will address these interrogatories. But
10 Judge Gleeson disagrees with them. As I said, in Interchange,
11 they briefed summary judgment while --

12 THE COURT: Well, he did it in that case. But I'm
13 not sure how much the issues in that case and how that case
14 lines up with this case in terms of the variability of the
15 defendants, how different they are from each other in relation
16 to the claims. I don't know that much about that case.

17 MR. KAPLAN: Right.

18 THE COURT: But my sense is, as I recall -- well, I
19 better not recall. I think this is very much a sort of case,
20 a specific kind of issue. And maybe if you know enough about
21 that other case you can line up why those cases are the same
22 as this case and should be treated the same way procedurally.

23 You certainly have precedent for the notion that
24 summary judgment can proceed. It has happened in this court.
25 I mean in this court and before Judge Gleeson, who is a judge

1 here. So I'm aware that that is a possibility. I mean, it
2 takes more than that, it seems to me, before I can be
3 convinced that that's the appropriate approach in this case.

4 MR. KAPLAN: The defendants in Interchange were
5 opposing the class, that the class shouldn't be certified,
6 that all of the merchants were different. That there were
7 different -- it's the same arguments that defendants always
8 make against class certification being made there.

9 But I would say I don't think that the summary
10 judgment would have to be piecemeal. You can fully brief
11 summary judgment here. And the point they make that the
12 plaintiffs, some of them bought from only one defendant,
13 that's a red herring because there's joint and several
14 liability. They don't have to buy from every defendant.

15 We think there's precedent, it makes sense. If Your
16 Honor wants some submission about why this is like
17 Interchange, we could prepare that.

18 Mr. Sedran will address the interrogatories.

19 THE COURT: It seems to me that the easy answer for
20 all the open discovery is to actually set a deadline for any
21 motions to compel, and sort of get that out of the way. That
22 needs to be gotten out of the way no matter what.

23 MR. SEDRAN: Good afternoon, Your Honor. Howard
24 Sedran.

25 There is a fact discovery deadline. It was December

1 31st, 2013. The fact discovery is finished, unless a
2 defendant or the defendants come forward and seek to modify
3 the scheduling order. Moreover, a defendant or a party who
4 had a discovery problem, under the case law that we'll cite if
5 there is any motion practice, motions to compel needed to be
6 filed in the first part of December to be on the Court's
7 schedule to be heard at the end of December. Discovery is
8 over. So the defendants were sleeping on their rights. It's
9 now just about the end of April. What were they waiting for?

10 THE COURT: I don't know. I'm getting the
11 impression they were in discussions with you about ways to
12 resolve the issue. You'll get a chance to speak again,
13 please. To resolve the issues without involving the Court.
14 That's the impression I was getting from this. Maybe that was
15 wrong.

16 MR. SEDRAN: Let me respond defendant by defendant.
17 With respect to Air New Zealand, the parties resolved their
18 differences. We have a confidential agreement about it. We
19 will give them, ANZ, supplemental information at the end of
20 May.

21 THE COURT: May I interrupt you for a moment. Let
22 me play this out. You're going to give them the information.
23 You made a deal to postpone getting that issue before the
24 Court. They may not be happy with your responses. They're
25 going to make the credible argument, I think, that they have a

1 right to come to me and resolve that.

2 MR. SEDRAN: That's all very speculative, but the
3 question is, is that a basis not to move for summary judgment
4 because we worked things out?

5 With respect to Asiana, Asiana arguably stands alone
6 from all the other defendants because we have had discussion
7 about the outstanding discovery request. It may be that we
8 are at an impasse and they're going to have to move to compel.

9 Our position will be that, in this case, in light of
10 the extensive discovery, if you remember, way back, in one of
11 our early motion arguments, the Court required the defendants
12 to provide information that they knew without looking at
13 document as to the meetings and communications about
14 surcharges, and they had to identify the dates, the
15 participants, the location, and the subject matter, but not
16 the substance. And then the plaintiffs, in the course of
17 discovery, reciprocated and we provided charts of all the
18 information we learned that was not part of formal discovery.

19 So this is what we served on the defendants. I
20 don't know if you need to look at it, but it's filled with
21 charts of all of the information we learned outside of
22 discovery. Then the defendants, they served charts
23 identifying all the meetings and communications. And then
24 there was much discovery in the case.

25 So our position is -- oh, let me just add one other

1 factor. Then we have the extensive class certification
2 hearing. And because of the rigorous analysis that's
3 necessary, in our opening class brief we laid out all of our
4 theories of the case in extensive briefing. And at the
5 hearing before the Court, Mr. Landau, through the PowerPoint
6 presentation, laid out the theories of the case.

7 So our view is, Your Honor, that contention
8 discovery here is not necessary. It's only busy work. The
9 defendants know what we know. So it would just be busy work
10 and a waste of time, and that we think the time would be
11 better spent briefing summary judgment than answering
12 contention discovery. But that's not before you yet.

13 So Asiana and the plaintiffs have had discussions.
14 I think they can say that they thought maybe they could be
15 resolved. But for all the other defendants, Your Honor, they
16 just slept on their rights and have done nothing to move the
17 ball forward. For months and months we haven't heard from
18 them. If they had a problem, they had to come and raise the
19 issue. The discovery deadline is done. They should have done
20 something.

21 Your Honor, I'll draw your attention to Rule 26
22 which says that a party need only supplement their answers to
23 interrogatories if the additional information has not
24 otherwise been disclosed in discovery. So in the course of
25 all the depositions that have been taken, all sides know what

1 all the facts are.

2 So when the defendants say discovery is open, Your
3 Honor, it is not. They're going to have to move, file papers
4 not only to compel but to explain to the Court why they slept
5 on their rights for a year, two years, and did nothing. It's
6 time to move forward.

7 THE COURT: What about the -- you've addressed the
8 interrogatories. There were also some supposedly open
9 document requests and Rule 30(b)(6) depositions.

10 MR. SEDRAN: Yes, Your Honor. That actually
11 supports what I'm saying. Towards the end of the discovery
12 deadline, the parties realized that they might need to take
13 some depositions to authenticate documents and lay the
14 foundation for the documents to be business records.

15 So the parties, as the rules provide, before the
16 close of the fact discovery deadline, moved, filed papers
17 before the Court to extend the deadline.

18 THE COURT: For that purpose?

19 MR. SEDRAN: For that purpose only. There's one
20 stray deposition that was subject to the Court's order
21 allowing discovery to be delayed. That's a third-party,
22 nonparty OAG. Only to authenticate documents. So there's
23 nothing that's going to delay anything. It's just one
24 deposition, maybe another one will pop up, just to
25 authenticate documents, but it's subject to the Court's order.

1 And the parties moved as they should have before the close of
2 fact discovery.

3 So we say they were asleep, they waived their
4 rights, except for Asiana, arguably. But at the end of the
5 day, they're not going to be entitled to the discovery they
6 want. It's way too broad. Under these circumstances, in
7 light of the extensive, extraordinary exchange of information,
8 I don't think they're going to get what they want.

9 MR. SIMMONS: Your Honor, Ian Simmons for Asiana.
10 If I can just respond.

11 THE COURT: I thought he sort of carved you guys
12 out.

13 MR. SIMMONS: I just want to put something on the
14 record. It's nice to hear that Asiana is not perceived as
15 sleeping on its rights. He has kind of a footnote on that.
16 This is what Mr. Sedran wrote Asiana on September 19th.

17 THE COURT: You know, gentlemen, I have a feeling
18 that all of this is going to be hashed out in the motions to
19 compel that people will make regardless what you tell me. I'm
20 not going to prevent somebody from making those motions,
21 although I may end up ruling in Mr. Sedran's favor once I get
22 all the information. So I'm not sure you need to make too
23 much of a record.

24 MR. SIMMONS: If I could just have 20 seconds, 30
25 seconds. He wrote us on December 19th, 2013, citing and

1 quoting from a letter that he wrote us on May 16, 2011, which
2 says, quote, "Plaintiffs' position is that appropriate
3 contention interrogatories need not be answered until sometime
4 after the close of discovery and in connection with pretrial
5 submissions," close quote.

6 The defendants served, a basic tone, who Asiana
7 conspired. Corporations are inanimate things. We want to
8 know who, when, where, who they talked to, and what's really
9 your basis that they should be able to write us.

10 This was served -- and we want to know -- he says
11 this is a joint and several liability case. We want to know
12 what Judge Friendly said. You know, each conspirator has to
13 own the conspiracy. We want to know it about ourselves and we
14 want to know it about the people that they're trying to hold
15 us jointly and severally liable for. They wrote us in 2011
16 saying I'll tell you after the close of discovery.

17 THE COURT: You hit 30 seconds.

18 MR. SIMMONS: We still don't have an answer.

19 MS. SINFELT: Meena Sinfelt, if I may just make a
20 couple of quick points. The plaintiff's argument here seems
21 to be we need to move forward because. We don't have a reason
22 why, they just need to move forward because. The defendants
23 are here saying --

24 THE COURT: I think what they're saying is we want
25 to move forward. The case is eight years old and we need to

1 get a resolution, which is a bona fide desire.

2 MS. SINFELT: Absolutely. However, the age of this
3 case is not attributable to any of the defendants sitting
4 here.

5 THE COURT: Well, it's not a question of fault.
6 It's a question of getting it resolved. That's the question.

7 MS. SINFELT: I understand. But the defendants are
8 here saying we cannot move forward because there are pending
9 discovery issues. And while Mr. Sedran takes the position
10 that it's too speculative to say whether or not Air New
11 Zealand would need to file a motion to compel, I would take
12 issue with that because it took us three months to come to a
13 compromise on an initial response.

14 So, clearly, there may be very important issues that
15 we need to bring in front of the Court. And the 30(b)(6)
16 issues I think are quite a bigger issue than Mr. Sedran is
17 again making it.

18 THE COURT: What 30(b)(6) depositions do you
19 think there are? Are there substantive 30(b)(6) depositions
20 that are open?

21 MS. SINFELT: No, Your Honor. But I think that's
22 even more important because these are just for authentication
23 of documents. This is an issue which should have been worked
24 out between the parties. Authentication is not a difficult
25 issue. And, yet, we're now having to have live testimony at

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1 least on one non-party. So for Mr. Sedran to say that it's
2 not going to hold up the schedule is either disingenuous or he
3 has a crystal ball, because OAG Cargo was actually supposed to
4 have been done in March and then they had to apply for another
5 extension until the end of May.

6 THE COURT: Is it just one 30(b)(6) deposition we're
7 talking about?

8 MS. SINFELT: There's one for OAG Cargo which is a
9 nonparty. However, there are at least two, I think, or three
10 possibly still remaining. I know of Eva and I believe there
11 are others.

12 THE COURT: Why can't they be done?

13 MS. SINFELT: Your Honor, I can't speak on behalf of
14 those defendants and where they're at in the stages with the
15 plaintiffs on negotiations and getting declarations.

16 THE COURT: Why would that affect summary judgment?

17 MS. SINFELT: I'm not sure that it would affect
18 summary judgment, Your Honor. Mr. Sedran was saying it's not
19 going to hold anything up down the line. These issues have
20 already held things up. OAG Cargo, a nonparty with no
21 interest here, couldn't come to any agreement with the
22 plaintiff on a declaration and had to apply for two extensions
23 so that they can now have a live deposition in a few weeks.

24 THE COURT: Okay.

25 MR. KAPLAN: Your Honor.

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1 THE COURT: Mr. Wolkoff.

2 MR. WOLKOFF: Just briefly, if Your Honor wants to
3 hear a rejoinder to Mr. Sedran about why Polar did not sleep
4 on its rights.

5 THE COURT: I don't need that. I think they've
6 telegraphed what position they're going to take and what your
7 position your, I guess, soon to be made motion to compel. I'm
8 not going to decline anyone from making any such motions.
9 That's not to say that the plaintiffs can't take whatever
10 position they rightfully can take. There's no reason to argue
11 it now. Basically, I'm not going to remember it.

12 MR. WOLKOFF: Fine, Your Honor.

13 THE COURT: It's not useful.

14 MR. WOLKOFF: Just note for the record we do not --
15 in fact, we vehemently disagree with what Mr. Sedran said. I
16 suppose it will be argued at some point in the future.

17 THE COURT: Mr. Murray.

18 MR. MURRAY: We had conversations with regard to
19 contention interrogatories in October, November, December,
20 e-mails and letters. I don't know how they can say we were
21 sleeping on our rights.

22 Anyway, going to the summary judgment, we want
23 responses to contention interrogatories because they may, in
24 fact, be used in our summary judgment motion because we're
25 asking them to specify what their claim is. And if they can't

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1 or they say they don't have the information, that's an
2 admission we can use on the summary judgment motion. So I
3 don't know how we can move forward with summary judgment
4 unless we have responses to contention interrogatories.

5 THE COURT: Does that complete the defendants?

6 MR. ARENSEN: Let me just say something about the
7 30(b)(6) depositions. And I'll be very brief, Your Honor.

8 THE COURT: Just for the record, your name.

9 MR. ARENSEN: My name is Greg Arenson for the
10 plaintiffs. Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. ARENSEN: With regard to the OAG Cargo
13 deposition, we set a deadline which is a deposition of May 8th
14 so we could, in fact, have a deadline to work against. We
15 are, I think, just about to have a stipulation. We sent a
16 draft over today to OAG's counsel. I am very hopeful that
17 that will get resolved without a deposition. On the other
18 hand, if it has to go forward, it will.

19 With regard to one of the other 30(b)(6) depositions
20 that has to do with Defendant Eva, we had a very productive
21 discussion with Eva's counsel on Monday. He did say that if
22 for some reason we can't manage to work it out, we're working
23 hard on it, then we'll take the deposition on May --

24 THE COURT: Are they still a defendant?

25 MR. ARENSEN: Yes, Eva is still a defendant. I

1 think they have a representative right over here. The idea
2 is, just again, if you want a document you've got to make sure
3 you get what you can. And we're trying to work our way
4 through that. So there is no delay here and I expect things
5 to be resolved by the end of May.

6 MR. KAPLAN: Robert Kaplan. Let me just say, in
7 every case I've had, we've always worked out document issues
8 near the end, sometimes on the eve of trial.

9 THE COURT: Right.

10 MR. KAPLAN: So this is not unusual that we're
11 negotiating authenticity and issues like that, and we're
12 agreeing on some and not agreeing on others. I mean, that's
13 no different than any other case. I've had it a week before
14 trial, working things out like this. Most of these are going
15 to come into evidence. We're just trying to see what we can
16 agree to. That's all.

17 THE COURT: All right. May 31st is the deadline for
18 making any motions with respect to discovery that has not been
19 provided. Is that when you're getting your responses?

20 MS. SINFELT: It's right on the eve of when we're
21 getting our responses.

22 THE COURT: I'm going to advance that. You're going
23 to get responses by May 24th so you have a week to review it.
24 I know you made a deal, but let's make May 31st a nice round
25 date. I'm going to hold off dealing with the summary judgment

1 deadlines.

2 One thing that I'm not clear about, and that is
3 this, has there been some ruling by Judge Gleeson earlier on
4 that referred to me the question of summary judgment? Because
5 he has a pre-motion conference requirement. So I'm reluctant
6 to set any schedule other than a deadline for making an
7 application for a pre-motion conference pursuant to his rules.

8 Maybe I'm forgetting some reference that he made to
9 me long ago. I don't think he did.

10 MR. KAPLAN: I think Your Honor is right. I do not
11 recall any reference for summary judgment.

12 THE COURT: I did see that you have a proposal for a
13 deadline for filing motions. I am not at liberty, I don't
14 think, in the absence of a referral from Judge Gleeson.

15 In any event, frankly, if there was, if it was up to
16 me, I'd still have a pre-motion conference on the summary
17 judgment to figure out what the issues were and what the
18 people will make motions on. That's not for me at this point.
19 I believe that will be up to Judge Gleeson.

20 So I'm going to hold off setting a deadline for
21 sending those pre-motion conference letters. In the meantime,
22 I will talk to Judge Gleeson myself to see what his preference
23 is with respect to that. When we get together again, which
24 will be in mid-June or sometime shortly thereafter, I hope
25 that I will have all the briefing necessary to decide the

1 outstanding discovery issues, I will be in a better position
2 to assess the issues about scheduling summary judgment
3 matters.

4 This has been a useful discussion for me because
5 I've learned something about how you're viewing the various
6 issues. So don't think it was a waste of time because it
7 wasn't, at least not from my standpoint.

8 MR. KAPLAN: Thank you, Your Honor.

9 THE COURT: I know that some of the scheduling
10 concerned -- trial scheduling issues and marking documents and
11 exhibits and that sorts of thing. It really is premature for
12 me to be dealing with that. That's something that Judge
13 Gleeson may want to weigh in on. He may well refer it to me,
14 but I have to talk to him about that as well.

15 I'm not really prepared today to talk about that
16 long range scheduling. I think the most immediate issue is
17 the scheduling of summary judgment motions, when it makes the
18 most sense to do that.

19 And just to give the plaintiffs -- I will be looking
20 to see how this case parallels other cases Judge Gleeson has.
21 And I may well even discuss the matter with Judge Gleeson to
22 see what his view is, how he thinks the summary judgment
23 motion practice should proceed since it does affect him as
24 well.

25 MR. KAPLAN: Thank you, Your Honor.

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1 Did you want the second point?

2 THE COURT: Unless there's something else to be
3 said, and I don't think there is, we'll move to the next
4 issue. But I do want you to be aware, May 31, any motions
5 that are necessary with respect to outstanding discovery have
6 to be made, because I do want to put an end on that.

7 MR. SEDRAN: In terms of the plaintiffs' response,
8 there are going to be multiple motions, and we haven't seen
9 them. It's a little hard to know exactly how much time we
10 will need.

11 THE COURT: We're not talking about a great deal of
12 discovery. Hopefully not. We're talking about sets of
13 contention interrogatories.

14 Are there that many out there?

15 MR. SEDRAN: There are multiple defendants.

16 THE COURT: What were you going to propose?

17 MR. SEDRAN: We need two weeks. I was going to say
18 respond by June 16.

19 THE COURT: That sounds fair. All right, and I
20 don't need replies. I'll schedule a hearing for sometime
21 shortly after June 16th. I will look at my calendar and we'll
22 do that in a few minutes. Hopefully I'll be able to resolve
23 those issues.

24 May 31, is that a good day?

25 MS. SALZMAN: That's a Saturday.

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1 THE COURT: Then it'll be June 2nd and June 16th.

2 MR. SEDRAN: I'll take June 18th.

3 THE COURT: You want more than two weeks.

4 MR. SEDRAN: I thought you said the defendants
5 motion is now due June 2.

6 THE COURT: Two weeks after June 2 is June 16th.

7 MR. SEDRAN: Okay.

8 THE COURT: Okay. Let's move to the next issue.

9 Mr. Kaplan, you said you were prepared to talk on that.

10 MR. KAPLAN: We have entered into three settlement
11 agreements with Korean Air for \$115 million; with Singapore
12 for, I think, 92 or 93 million; and with Cathay for
13 65 million. We have an agreement in principal, I'm authorized
14 to say with China Air. I can't disclose the amount yet.

15 THE COURT: I thought China Air was one --

16 MR. KAPLAN: Air China. One is Taiwan and one is
17 Beijing.

18 THE COURT: I got it.

19 MR. KAPLAN: So we have received preliminary
20 approval for Korean, Singapore, and Cathay. We hope to move
21 for preliminary approval with China Air in the next week.
22 Once we get preliminary approval with China Air, we intend to
23 apply to Judge Gleeson to send the notice out for the four
24 settlements, and get final approval. And, hopefully, that
25 would be on for next fall.

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1 THE COURT: How many defendants does that leave
2 outstanding?

3 MR. KAPLAN: I believe seven.

4 THE COURT: Okay. The only other thing is the date
5 for the next status conference, right. That's all we have
6 left. I have Wednesday afternoon, the 18th.

7 MR. KAPLAN: I cannot be here, Your Honor. You can
8 do it without me if other people want to --

9 MR. ARENSON: I'd rather you be here.

10 THE COURT: I can also do it Thursday the 19th.

11 MR. KAPLAN: I'm on a panel in the Amsterdam, a
12 class action panel, Trans Atlantic, on June 18.

13 THE COURT: Are you going to deal with summary
14 judgment and class certification?

15 Do the plaintiffs feel like they need to have
16 Mr. Kaplan around?

17 MR. SEDRAN: We'd like to have him. Is there
18 anything available the following week?

19 THE COURT: I'm looking right now. The 26th is a
20 Thursday. The 26th, I can do that.

21 MR. KAPLAN: Does that work for Your Honor?

22 THE COURT: Thursday, June 26th at 2:00.

23 MR. KAPLAN: Thank you.

24 THE COURT: Okay. I'll see you then.

25 MR. SEDRAN: Thank you, Your Honor.

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1 MR. KAPLAN: Thank you, Your Honor.

2 MS. SINFELT: Thank you, Your Honor.

3 MR. ARENSON: Thank you, Your Honor.

4 MR. WOLKOFF: Thank you, Your Honor.

5 (Matter concluded at 3:55 p.m.)

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